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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/532,189

04/21/2005

John James Steinfert

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EXAMINER

STALEY, KRISTINA N

ART UNIT

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4117

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/532,189	Applicant(s) STEINFORT ET AL.	
	Examiner KRISTINA STALEY	Art Unit 4117	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/21/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-9, 12-19, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Jong et al. (US 5,588,234) (de Jong) in view of Pannier (US 1,376,223).

Referring to Claim 1: de Jong teaches an animal tag comprising ramp means (Figure 2, #3) for each locking portion, wherein the arrangement is such that the ear penetrating members (Figure 1, #5) are designed to be passed through the ear of an animal (Figure 2, #2) and to lock onto the locking portions (Figure 2, #18) to sandwich the ear in a gap between the penetrating component (Figure 1, #5) and complementary component (Figure 2, #1) and the ramp means are arranged to co-operate with the skin penetrating members to vary the size of the gap to provide a range of gap sizes to

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accommodate varying ear thicknesses and/or growth of the animal (col. 3, lines 45-49). It would have been obvious to one of ordinary skill in the art at the time of the invention to place the ramp means on the penetrating portion instead of the locking portion as in de Jong as it has been held that a mere reversal of essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. De Jong does not teach two ear penetrating portions. Pannier teaches a penetrating component (Figure 4, #11) having two ear penetrating members (Figure 4, #14) joined by a strip of intermediate material (Figure 4, #11) and a complementary component (Figure 4, #15) having a locking portion (Figure 4, #16) for each penetrating member (Figure 4, #14).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Pannier into the invention of de Jong in order to avoid the ear tag being caught on outside objects, such as a fence, and damaging the ear by using two penetrating members to hold the ear tag more securely to the ear.

Referring to Claim 2: de Jong further teaches an animal tag wherein the ramp means comprise a pair of ramps (Figure 2, #3) connected on opposite sides by a joining portion (Figure 2, #12), and the joining portion extends into the gap so as to provide circulation regions around the ear penetrating member where the gap (Figure 2, between #1 and #12) is increased in width compared with a region of the gap between the joining portion and the ear (Figure 2, between #2 and #12).

Referring to Claims 3 and 13: de Jong further teaches an animal tag wherein each ear penetrating member (Figure 3, #3) comprises a skin penetrating head (Figure 3, #16) joined to a strip of intermediate material by a tubular portion (Figure 3, #5), the

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join between each skin penetrating head and tubular portion being formed as a shoulder (Figure 3, #18) adapted to cooperate with a locking portion to lock the penetrating component and complementary component together (col. 4, lines 1-6).

Referring to Claims 4 and 14: de Jong further teaches an animal tag wherein each skin penetrating head comprises a central supporting portion (Figure 6, #6) of moulded plastics material (col. 3, lines 30-31 and col. 2, lines 42-43) provided with two thin flanges (Figure 10, #34) extending from the central supporting portion (Figure 10, #33), the two thin flanges having sharp edges and meeting at a sharp point forward of the supporting portion (col. 5, lines 52-53).

Referring to Claims 5 and 15: de Jong further teaches an animal tag wherein each of the locking portions comprises a cap (Figure 8, #29) which substantially covers and surrounds each skin penetrating head (col. 5, lines 12-13).

Referring to Claims 6 and 16: de Jong further teaches an animal tag wherein a strip of intermediate material comprises plastic material (col. 3, lines 45-46) which is sufficiently flexible to be bent from a substantially fiat configuration (Figure 1) when regions of the ear penetrating members joined to the strip of intermediate material are at their maximum separation, to a bent configuration when the regions of the ear penetrating members are squeezed towards each other (Figure 2; col. 3, lines 46-48).

Referring to Claims 7 and 17: de Jong further teaches an animal tag having attached thereto a transponder (Figure 1, #7 and #8; col. 2, lines 44-48).

Referring to Claims 8 and 18: de Jong further teaches an animal tag attached thereto a flag (Figure 9, #30; col. 5, lines 41-43) and a transponder (Figure 1, #7 & #8; col. 2, lines 44-48).

Referring to Claims 9 and 19: de Jong further teaches an animal tag wherein a transponder (Figure 1, #7 & #8) is housed in a housing (Figure 9, #1) attached to a flag (Figure 9, #32).

Referring to Claim 12: de Jong teaches an animal tag arrangement such that ear penetrating members (Figure 1, #5) are designed to be passed through the ear of an animal (Figure 2, #2) and to lock onto locking portions (Figure 2, #18) to sandwich the ear in a gap between the penetrating component (Figure 1, #5) and complementary component (Figure 2, #1) and a joining portion (Figure 2, #12) extends into a gap so as to provide circulation regions around the ear penetrating member where the gap (Figure 2, between #1 and #12) is increased in width compared with a region of the gap between the joining portion and the ear (Figure 2, between #2 and #12). De Jong does not teach two ear penetrating portions. Pannier teaches a penetrating component (Figure 4, #11) having two ear penetrating members (Figure 4, #14) joined by a strip of intermediate material (Figure 4, #11) and a complementary component (Figure 4, #15) having a locking portion (Figure 4, #16) for each penetrating member (Figure 4, #14).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Pannier into the invention of de Jong in order to avoid the ear tag being caught on outside objects, such as a fence, and damaging the ear by using two penetrating members to hold the ear tag more securely to the ear.

Referring to Claim 22: de Jong further teaches an animal tag wherein each locking portion (Figure 1, #1) comprises a slot (Figure 1, #19) and each penetrating member (Figure 1, #5) comprises a skin penetrating head (Figure 1, #6) for passing through the slot (col. 2, lines 40-44).

Claims 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Jong et al. (US 5,588,234) in view of Pannier (US 1,376,223) as applied to claims 1 and 20 above, and further in view of Johnson (US 5,461,807).

De Jong in view of Pannier does not teach the structure of a housing for a transponder. Johnson teaches an animal tag wherein a housing comprises a first housing component having a recessed portion (Figure 2, #13) and second housing component (Figure 2, #12) joined to the first housing component by a hinge, whereby the first and second housing components may be folded into overlapping relationship to cover the recess and so form the housing (col. 1, lines 14-17). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Johnson into the invention of de Jong in order to provide a snag resistant and sealed housing for the electronics of the transponder (Johnson, col. 2, lines 1-11).

Claims 11 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jong et al. (US 5,588,234) in view of Pannier (US 1,376,223) as applied to claim 1 above, and further in view of Gessner (EP 0 754 406).

De Jong in view of Pannier does not teach the structure or location of the transponder. Gessner teaches a transponder (Figure 3, #20) comprising a wafer (Figure 2, #21) secured beneath a strip of intermediate material (Figure 1, #17) and between

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ear penetrating members (Figure 2, #14). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Gessner into the invention of de Jong in order to provide a transponder which would be flat and secured between the ear penetrating members to avoid accidental removal of the transponder.

Claims 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pannier (US 1,376,223).

Referring to Claim 23: Pannier teaches a method of tagging an ear of an animal comprising applying a penetrating component (Figure 1, #1) of an animal tag having two ear penetrating members (Figure 1, #14) joined by a strip of intermediate material (Figure 1, #11) to the ear of the animal (Figure 1, #10) by causing the ear penetrating members to penetrate through the ear (col. 2, lines 93-95), and locking a complementary component (Figure 4, #15) of the animal tag onto the ear penetrating members (Figure 1, #14; col. 2, lines 95-101). Pannier does not teach the specific region of the animal ear to pierce the tag through, however, it would have been obvious to one of ordinary skill in the art at the time of the invention to avoid areas of the ear where vascular ridges run in order to avoid harm to the animal and avoid festering.

Referring to Claim 26: Pannier further teaches applying the penetrating component so that it abuts a generally vertically directed surface of the ear (Figure 1).

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pannier (US 1,376,223) as applied to claim 23 above, and further in view of Hayes (US 3,958,353).

Pannier does not teach applying an ear tag on a horizontal surface. Hayes teaches applying a penetrating component so that it lies on an upper generally horizontal surface of an ear (Figure 3; col. 4, lines 18-22). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Hayes into the invention of Pannier in order to use the tag on differently shaped ears of different animals and still be visible.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pannier (US 1,376,223) in view of Hayes (US 3,958,353) as applied to claim 24 above, and further in view of Johnson (US 5,461,807).

Pannier in view of Hayes does not teach attaching a transponder to the ear tag. Johnson teaches securing a transponder to a strip of intermediate material (col. 2, lines 53-55). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Johnson into the invention of Pannier in order to update Pannier's invention by using an electronic identification device in the ear tag.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pannier (US 1,376,223) as applied to claim 23 above, and further in view of Johnson (US 5,461,807).

Pannier does not teach attaching a transponder to the ear tag. Johnson teaches securing a transponder con a complimentary component (col. 2, lines 53-55). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Johnson into the invention of Pannier in order to update Pannier's invention by using an electronic identification device in the ear tag.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Berardus van Amelsfort (US 4,718,697) discloses an ear tag with a hinged housing for a transponder; Dvorak (US 4,425,726) discloses a two-pronged ear tag with a slot for growth of the ear.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTINA STALEY whose telephone number is (571)270-7816. The examiner can normally be reached on Monday through Thursday, 8:00AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. S./

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Examiner, Art Unit 4117

/Joanne Silbermann/

Primary Examiner, Art Unit 3611